

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 22, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**No. 96-3337**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**JAMES LAMMERS,**

**PETITIONER-APPELLANT,**

**v.**

**JAMES LABELL,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Dane County: P. CHARLES JONES, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. James D. Lammers appeals an order dismissing this mandamus action for failure to prosecute. We affirm.

Lammers filed his petition for mandamus under the Open Records law on November 30, 1994. On March 1, 1995, the respondent moved for

dismissal or summary judgment. The circuit court issued a briefing schedule which required Lammers to file a brief responding to the motion by April 3, 1995. Lammers did not file a brief, or anything else, before the respondent moved to dismiss for failure to prosecute on June 20, 1995. Lammers did not respond to that motion, and more than one year later, on June 26, 1996, the court dismissed the case. Lammers then filed a “motion to reverse order” on July 1, 1996. The motion made various assertions about how the respondent and others had conspired to physically prevent him from complying with the court’s briefing order. The court denied the motion.

When a circuit court dismisses a case as a sanction for failure to obey a scheduling order, we will sustain the sanction if there is a reasonable basis for the circuit court’s determination that the conduct of the noncomplying party was egregious and there was no clear and justifiable excuse for the noncompliance. *Schneller v. St. Mary’s Hosp. Med. Ctr.*, 162 Wis.2d 296, 311, 470 N.W.2d 873, 878 (1991). An implicit finding of egregious conduct by the circuit court is sufficient if the facts provide a reasonable basis on review. *Id.* at 311, 470 N.W.2d at 879.

The facts of record show there was a reasonable basis to conclude Lammers’ conduct was egregious. He did not respond to the court or prosecute the case in any way until after the dismissal order was issued, despite having ample time to do so. The court did not erroneously exercise its discretion in concluding that Lammers’ motion for reconsideration did not affect its conclusion.

*By the Court.*—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

